

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|---------------------------|---|------------------|
| JOSE RIVERA, JR., |) | CIVIL ACTION NO. |
| Petitioner, |) | 05-11431-DPW |
| |) | |
| v. |) | |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| Defendant. |) | |

| | | |
|--------------------------|---|---------------------------|
| UNITED STATES OF AMERICA |) | CRIMINAL NO. 02-10264-DPW |
| |) | |
| v. |) | |
| |) | |
| JOSE RIVERA, JR. |) | |

MEMORANDUM AND ORDER
October 28, 2005

The petitioner in this matter, who was sentenced on September 10, 2003, following a plea agreement with the government, chose not to appeal. Some eighteen months after his judgment became final, he filed what was styled a "Motion for a Sentencing Hearing." There was no basis offered for such a procedure although reference has been made by the government's opposition to 18 U.S.C. § 3582.

None of the predicates for relief under § 18 U.S.C. § 3582(c) are apparent and consequently I directed the Clerk to docket the defendant's motion as a "Motion to Vacate, Set Aside or Correct the Sentence Under 28 U.S.C. § 2255," which is the proper mechanism for the relief the plaintiff seeks. Having identified the proper mechanism for the petitioner's request,

however, I find that the request itself is untimely because it was first made well past the one-year limitation period established by the fifth paragraph, subparagraph 1 of the Section 2255.

Accordingly, the Clerk is directed to DISMISS this action.

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE